

IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

IN RE:

Case No: 22-50228

POWER HOME SOLAR, LLC

Chapter 7

Debtor.

**MOTION BY ACAR LEASING LTD TO REQUIRE DEBTOR TO ASSUME OR
REJECT UNEXPIRED LEASES UNDER 11 U.S.C. § 365 and TO COMPLY WITH THE
REQUIREMENTS OF 11 U.S.C. §365(d)(5)**

NOW COMES the Movant ACAR Leasing Ltd (hereinafter “Movant”), a creditor and party in interest in the above-referenced matter, and pursuant to Rules 9014 and 4001 of the Rules of Bankruptcy Procedure and 11 U.S.C. §§ 365(d)(2) and 362(d), moves this Court to enter an Order requiring Power Home Solar, LLC (hereinafter “Debtor”) to assume or reject the unexpired lease agreements between the Debtor and the Movant, to compel the Debtor to comply with the terms of 11 U.S.C. § 365(d)(5), and for relief from the automatic stay provisions of 11 U.S.C. § 362(a) as to that personal property should the Debtor reject the lease agreements.

In support of this Motion, Movant states as follows:

1. The Debtor sought and obtained relief from this Court under Chapter 7 of the United States Bankruptcy Code by a voluntary petition filed on October 7, 2022.

JULY 19, 2021 CLOSED END MOTOR VEHICLE LEASES

2. On or about July 19, 2021, the Debtor entered into twenty-five (25) Closed End Motor Vehicle Leases (hereinafter the “July Leases”) with Rick Hendrick City Chevrolet for the lease of the following Chevrolet Bolt EV automobiles:

Exhibit No.	VIN Number	Year	Make	Model
A-1	1G1FZ6S07L4148460	2020	Chevrolet	Bolt EV
A-2	1G1FX6S09L4145601	2020	Chevrolet	Bolt EV
A-3	1G1FW6S00L4145585	2020	Chevrolet	Bolt EV
A-4	1G1FW6S09L4145052	2020	Chevrolet	Bolt EV
A-5	1G1FY6S08M4113401	2020	Chevrolet	Bolt EV
A-6	1G1FX6S09L4145565	2020	Chevrolet	Bolt EV
A-7	1G1FY6S04L4129187	2020	Chevrolet	Bolt EV
A-8	1G1FW6S05L4149941	2020	Chevrolet	Bolt EV
A-9	1G1FY6S01L4137358	2020	Chevrolet	Bolt EV
A-10	1G1FY6S08L4137454	2020	Chevrolet	Bolt EV
A-11	1G1FY6S03L4146501	2020	Chevrolet	Bolt EV
A-12	1G1FZ6S07L4149608	2020	Chevrolet	Bolt EV
A-13	1G1FY6S01L4149865	2020	Chevrolet	Bolt EV
A-14	1G1FZ6S0XL4149375	2020	Chevrolet	Bolt EV
A-15	1G1FY6S06L4126551	2020	Chevrolet	Bolt EV
A-16	1G1FY6S02M4113233	2020	Chevrolet	Bolt EV
A-17	1G1FY6S08M4113771	2020	Chevrolet	Bolt EV
A-18	1G1FY6S01M4110159	2020	Chevrolet	Bolt EV
A-19	1G1FW6S04L4141099	2020	Chevrolet	Bolt EV
A-20	1G1FY6S03L4146689	2020	Chevrolet	Bolt EV
A-21	1G1FZ6S0XL4144810	2020	Chevrolet	Bolt EV
A-22	1G1FY6S09L4146700	2020	Chevrolet	Bolt EV
A-23	1G1FY6S08L4141035	2020	Chevrolet	Bolt EV
A-24	1G1FY6S00L4146178	2020	Chevrolet	Bolt EV
A-25	1G1FW6S05L4148594	2020	Chevrolet	Bolt EV

A true and accurate copy of each Lease, TRAC Addendum to Lease Agreement, and Certificate of Title is attached hereto as indicated and as **Exhibits A-1 through A-25**, all of which are incorporated herein by reference.

3. The July Leases each required the Debtor to make an initial payment due at signing and then thirty-six (36) monthly lease payments of \$742.68/month beginning July 19, 2021. The July Leases are in default for the June – September payments for each lease. The arrearages for each July Lease is \$2,945.72, as set forth more particularly in Exhibit C which is attached hereto and incorporated herein by reference.

4. Debtor defaulted on each of the July Leases prepetition by failing to make the

monthly payments required by the July Leases. Debtor remains in possession of the leased vehicles described in the July Leases.

5. As of the petition date, Debtor is presently indebted to Movant for past due lease payments in an aggregate amount of \$73,545.86 for the July Leases. Additional amounts continue to accrue, including late charges, attorney's fees and other costs properly allocated to Debtor under the July Leases.

AUGUST 26, 2021 CLOSED END MOTOR VEHICLE LEASES

6. On or about August 26, 2021, the Debtor entered into twenty-five (25) Closed End Motor Vehicle Leases (hereinafter the "August Leases") with Rick Hendrick City Chevrolet for the lease of the following Chevrolet TRAX and Chevrolet Equinox automobiles:

Exhibit No.	VIN Number	Year	Make	Model
B-1	3GNCJLSB4LL326327	2020	Chevrolet	Trax
B-2	3GNCJLSB9LL327375	2020	Chevrolet	Trax
B-3	3GNCJLSB7LL327035	2020	Chevrolet	Trax
B-4	3GNCJLSB5LL326627	2020	Chevrolet	Trax
B-5	3GNAXHEV4LS734888	2020	Chevrolet	Equinox
B-6	KL7CJKSB6LB326458	2020	Chevrolet	Trax
B-7	KL7CJKSB2LB320558	2020	Chevrolet	Trax
B-8	3GNAXKEVXLS735332	2020	Chevrolet	Equinox
B-9	3GNAXUEV2LL278635	2020	Chevrolet	Equinox
B-10	3GNAXJEV1LS716274	2020	Chevrolet	Equinox
B-11	3GNAXJEV7LS711368	2020	Chevrolet	Equinox
B-12	3GNAXJEV7LS675682	2020	Chevrolet	Equinox
B-13	3GNAXJEV5LS711353	2020	Chevrolet	Equinox
B-14	3GNCJR7SB7LL283119	2020	Chevrolet	Trax
B-15	3GNCJLSB1LL263719	2020	Chevrolet	Trax
B-16	3GNCJLSBXLL326638	2020	Chevrolet	Trax
B-17	3GNAXJEV7LS712147	2020	Chevrolet	Equinox
B-18	3GNAXJEV9LS657894	2020	Chevrolet	Equinox
B-19	3GNAXJEV3LS716275	2020	Chevrolet	Equinox
B-20	3GNAXJEV8LS670393	2020	Chevrolet	Equinox
B-21	3GNAXKEV9LS735337	2020	Chevrolet	Equinox

B-22	3GNCJLSB3LL320289	2020	Chevrolet	Trax
B-23	KL7CJPSBXLB317341	2020	Chevrolet	Trax
B-24	3GNCJLSB9LL301732	2020	Chevrolet	Trax
B-25	3GNCJLSB4LL309740	2020	Chevrolet	Trax

A true and accurate copy of each Lease, TRAC Addendum to Lease Agreement, and Certificate of Title is attached hereto as indicated and as **Exhibits B-1 through B-25**, all of which are incorporated herein by reference.

7. The August Leases each required Debtor to make an initial payment due at signing and then thirty-six (36) monthly lease payments beginning August 26, 2021. Each August Lease is in default for the June – September payments as follows and as set forth more particularly in Exhibit C:

DPD	Past Due Amount	VIN	Year	Make	Model	Body Style
109	\$2,690.28	3GNCJLSB4LL326327	2020	Chevrolet	Trax	4DR FWD LT
109	\$2,690.28	3GNCJLSB9LL327375	2020	Chevrolet	Trax	4DR FWD LT
109	\$2,690.28	3GNCJLSB7LL327035	2020	Chevrolet	Trax	4DR FWD LT
109	\$2,690.28	3GNCJLSB5LL326627	2020	Chevrolet	Trax	4DR FWD LT
109	\$3,049.28	3GNAXHEV4LS734888	2020	Chevrolet	Equinox	4DR FWD LS
109	\$2,503.36	KL7CJKSBB6LB326458	2020	Chevrolet	Trax	4DR FWD LS
109	\$2,503.36	KL7CJKSBB2LB320558	2020	Chevrolet	Trax	4DR FWD LS
109	\$2,786.52	3GNAXKEVXLS735332	2020	Chevrolet	Equinox	4DR FWD
109	\$3,091.88	3GNAXUEV2LL278635	2020	Chevrolet	Equinox	4DR AWD
109	\$3,091.88	3GNAXJEV1LS716274	2020	Chevrolet	Equinox	4DR FWD
109	\$3,091.88	3GNAXJEV7LS711368	2020	Chevrolet	Equinox	4DR FWD
109	\$3,091.88	3GNAXJEV7LS675682	2020	Chevrolet	Equinox	4DR FWD
109	\$3,091.88	3GNAXJEV5LS711353	2020	Chevrolet	Equinox	4DR FWD
109	\$2,904.48	3GNCJRSB7LL283119	2020	Chevrolet	Trax	4DR SUV AWD
109	\$2,757.32	3GNCJLSB1LL263719	2020	Chevrolet	Trax	4DR FWD LT
109	\$2,690.28	3GNCJLSBXL326638	2020	Chevrolet	Trax	4DR FWD LT
109	\$3,091.88	3GNAXJEV7LS712147	2020	Chevrolet	Equinox	4DR FWD

109	\$3,091.88	3GNAXJEV9LS657894	2020	Chevrolet	Equinox	4DR FWD
109	\$3,091.88	3GNAXJEV3LS716275	2020	Chevrolet	Equinox	4DR FWD
109	\$3,091.88	3GNAXJEV8LS670393	2020	Chevrolet	Equinox	4DR FWD
109	\$3,091.88	3GNAXKEV9LS735337	2020	Chevrolet	Equinox	4DR FWD
109	\$2,802.96	3GNCJLSB3LL320289	2020	Chevrolet	Trax	4DR FWD LT
109	\$2,904.48	KL7CJPSBXLB317341	2020	Chevrolet	Trax	4DR FWD LT
109	\$2,877.84	3GNCJLSB9LL301732	2020	Chevrolet	Trax	4DR FWD LT
109	\$2,677.88	3GNCJLSB4LL309740	2020	Chevrolet	Trax	4DR FWD LT

8. Debtor defaulted on each of the August Leases prepetition by failing to make the monthly payments as required by the Leases. Debtor remains in possession of the TRAX and Equinox vehicles described in the August Leases.

9. As of the petition date, Debtor was indebted to Movant for past due lease payments in an aggregate amount of \$72,137.68 for the August Leases. Additional continue to accrue, including late charges, attorney's fees and other costs properly allocated to the debtor under the August Leases.

10. The Movant is the owner/lessor, by assignment, of the leased vehicles described in the July and August Leases which are attached hereto as a portion of Exhibits A-1 through B-25.

11. The amount of the monthly payments required by each lease is a fair and reasonable monthly rental for the use of the leased vehicles.

12. Debtor has no equity in the leased vehicles, but is currently using and has used the leased vehicles at all times since the filing of the voluntary petition on or about October 7, 2021.

13. Debtor's continued use of the leased vehicles depreciates the value of the leased vehicles, and Movant's ownership interest in the leased vehicles.

14. Movant's interest in the leased vehicles is not adequately protected.

15. Debtor has not offered adequate protection within the meaning of 11 U.S.C. §361.

16. In order to adequately protect Movant's interest in the leased vehicles within the

meaning of 11 U.S.C. § 361, the Debtor should at a minimum: (a) pay all past due amounts under the leases to the Movant immediately; (b) make all future monthly payments due under the leases on or before the due date for each such payment in the full monthly rental amount as required by each lease; (c) pay all other expenses properly allocated to the debtor under the leases in a timely manner; (d) service and maintain the vehicles in good working order and condition, properly servicing and storing the same and making all necessary repairs and replacements thereto; (e) advise Movant in writing of any change in location, condition, or use of the leased vehicles; (f) maintain insurance on the leased vehicles; (g) fully comply with all terms and conditions of the leases; and (h) immediately assume the leases pursuant to 11 U.S.C. § 365(d)(2).

17. The leases constitute unexpired leases pursuant to 11 U.S.C. §365 and the debtor has neither assumed nor rejected the leases.

18. Pursuant to Bankruptcy Code §§ 363(e) and 365(d)(2), Movant is entitled to request that the Court immediately provide Movant with adequate protection of its interest in the leased vehicles and enter an Order requiring the debtor to assume or reject the unexpired portion of the July and August Lease Agreements within a specified period of time.

16. Sufficient cause exists to waive the requirement of Rule 4001(a)(3) thereby giving full force and effect to the Order upon entry by the Court.

17. Movant specifically requests that Debtor be compelled to timely perform its obligations under the lease agreements and to promptly cure any default of its obligations, and to immediately assume or reject the lease agreements.

18. In the alternative, the Movant requests that the Court require the debtor to assume or reject the lease agreements within ten (10) days of the entry of an Order directing the debtor to take such action.

WHEREFORE, Movant prays for the following relief:

1. That the Court immediately prohibit or condition the debtor's use and operation of the leased vehicles as is necessary to provide Movant with adequate protection of its interest in the leased vehicles within the meaning of 11 U.S.C. § 361 and, at a minimum, order the debtor to comply with the Movant's requests set forth above in paragraph 16;

2. That the Court enter an Order requiring the Debtor to assume or reject the unexpired portion of each lease within a specified time period and that the time for rejection or acceptance be brief, not to exceed ten (10) days;

3. In the event the Debtor assumes any of the leases, that the Court approve the same pursuant to 11 U.S.C. § 365, provided the Debtor continues to provide Movant with adequate protection of its interest in the leased vehicles as requested above and that the Debtor first satisfy all prerequisites of assumption set forth in 11 U.S.C. § 365(b) including, but not limited to, payment of all past due amounts presently owed to Movant under each such lease, compensation to Movant for all actual pecuniary loss resulting from the Debtor's default, including, but not limited to, Movant's reasonable attorney's fees and expenses, and provide Movant with adequate assurance of the Debtor's future performance under the any such lease agreement;

4. In the event the Debtor rejects the lease agreements or fails to comply with the foregoing, that the Court order the Debtor to immediately surrender possession of the leased vehicles to Movant at a location of Movant's choosing, and that the automatic stay be modified so as to permit the Movant to seek the remedies available under the July and August Lease Agreements and state law relative to the taking of possession of the leased vehicles;

5. That the Movant have 120 days from the date of any lease rejection or the deadline to file proofs of claim, whichever it later, to file a proof of claim or to amend any proof of claim

previously filed;

7. That the Debtor be taxed with the cost of this Motion, including Movant's reasonable attorney's fees as authorized within the lease agreements;

8. That any hearing conducted on this motion be deemed a final hearing and not an interim hearing; and

9. For such other and further relief as this Court deems necessary.

This the 18th day of October, 2022.

SMITH DEBNAM NARRON DRAKE SAINTSING &
MYERS, LLP

/s/ Caren D. Enloe

Caren D. Enloe

NC State Bar No. 17394

PO Box 176010

Raleigh NC 27619-6010

(919)250-2000

cenloe@smithdebnamlaw.com

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

In re:

CASE NO. 22-50228

POWER HOME SOLAR, LLC

CHAPTER 7

Debtor.

NOTICE OF OPPORTUNITY FOR HEARING

TAKE NOTICE that ACAR Leasing Ltd. has filed papers with the Court to Require Debtor to Assume or Reject Unexpired Lease Under 11 U.S.C. § 365 and to Comply with the Requirements of 11 U.S.C. § 365(d)(5). A copy of these paper(s) is included with this notice.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have on in this bankruptcy case. If you do not have an attorney, you may wish to consult one.

If you do not want the Court to order Require Debtor to Assume or Reject Unexpired Lease Under 11 U.S.C. § 365 and to Comply with the Requirements of 11 U.S.C. § 365(d)(5), or if you want the Court to consider your views on the Motion, then on or before **fourteen (14) days from the date of this notice**, you or your attorney must do three things:

- 1. File a written response with the Court requesting that the Court hold a hearing and explaining your position. File the response at**

U.S. Bankruptcy Court
Charles R. Jonas Federal Building
Western District of North Carolina

401 W. Trade Street, Suite 2500
Charlotte, NC 28202

If you mail your request to the Court for filing, you must mail it early enough so the Court will **receive** it on or before the date stated above.

- 2. On or before the date stated above for written responses, you must also mail or fax a copy of your written request to:**

Caren D. Enloe
Smith Debnam Narron Drake Saintsing & Myers, LLP
P.O. Box 176010
Raleigh, NC 27619
Telephone: (919) 250-2000
Facsimile: (919) 250-2124
cenloe@smithdebnamlaw.com

- 3. Attend the hearing scheduled November 7, 2022 at 9:30 A.M.** at the United States Bankruptcy Court, Charles Jonas Federal Building, 401 West Trade Street, Charlotte, North Carolina 28202

If you or your attorney do not take these steps, **A HEARING WILL NOT BE HELD**, and the Court may decide that you do not oppose the relief sought in the motion or objection and may enter an order granting that relief.

DATE OF NOTICE: This the 19th day of October, 2022.

/s/ Caren D. Enloe
Caren D. Enloe
Of SMITH DEBNAM NARRON DRAKE
SAINTSING & MYERS, LLP
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*Counsel for ACAR Leasing Ltd. and its servicer,
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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

In re:

CASE NO. 22-50228

POWER HOME SOLAR, LLC

CHAPTER 7

Debtor.

CERTIFICATE OF SERVICE

I, Caren D. Enloe, of Smith Debnam Narron Drake Saintsing & Myers, LLP, state under penalty of perjury:

That I am, and at all times hereinafter-mentioned was, more than eighteen (18) years of age; and

That on the 19th day of October, 2022, I served copies of the foregoing NOTICE AND MOTION BY ACAR LEASING LTD TO REQUIRE DEBTOR TO ASSUME OR REJECT UNEXPIRED LEASES UNDER 11 U.S.C. § 365 and TO COMPLY WITH THE REQUIREMENTS OF 11 U.S.C. §365(d)(5) upon the following by mailing a copy thereof, postage prepaid:

Power Home Solar, LLC
919 N Main Street
Mooresville, NC 28115
Debtor

Jimmy R. Summerlin, Jr.
Young, Morphis, Bach & Taylor, LLP
P.O. Drawer 2428
Hickory, NC 28603
Trustee

and by electronic mail via CM/ECF filing to the following:

Joseph W. Grier, III
Grier Wright Martinez, PA
521 E. Morehead Street, Suite 440
Charlotte, NC 28202
Counsel for the Debtor

Rebecca F. Redwine
Jason L. Hendren
Benjamin E. F. B. Waller
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P.A.
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*Counsel for AFCO Credit
Corporation*

This the 19th day of October, 2022.

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*Counsel for behalf of Guru
Cultivation LLC*

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*Counsel for Cameron Fuchs and
Sabrina Bibicoff*

/s/ Caren D. Enloe

Caren D. Enloe